IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7881 of 1997

WITH

SPECIAL CIVIL APPLICATION No 5372 of 1993
WITH
SPECIAL CIVIL APPLICATION NO. 5373 of 1993
WITH
SPECIAL CIVIL APPLICATION NO. 5374 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MEHSANA DISTRICT CENTRAL CO-OPBANK LTD.
Versus
MEHSANA JILLA SAHAKARI KARMACHARI SANGH

Appearance:
MR G.M. JOSHI for the Petitioner in all matters

MR GIRISH PATEL, SENIOR ADVOCATE FOR MR A.J. YAGNIK
for Respondent Union in all matters

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 29/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. This group of petitions raises common questions and they are heard together.

2. Special Civil Application No. 7881 of 1997 has been filed against the final award made by the Industrial Court, Ahmedabad, on 4-8-1997 in Reference (I.C.) No. 9 of 1988, partly allowing the reference in respect of the change sought by the respondent - recognized representative union in the wage structure of the employees of the petitioner bank. Under the award, the Industrial Court made orders in respect of the seventeen items, the foremost being for the wages given to the various categories of the employees of the co-operative bank.

3. The respondent - union is admittedly the recognized registered union as well as approved union under the provisions of the Bombay Industrial Relations act (1946) (hereinafter referred to as "the said Act") for the banking industry of the local areas in the Talukas of Mehsana district. Earlier, an award was made on 10-8-1983 in Reference (I.A.) No. 243 of 1981 in respect of the wage structure of these employees. The respondent - union, by its notice dated 15-8-1987 (Exh.29/1) issued under section 116(1) of the act in Form "Q", terminated that award. The Assistant Registrar issued certificate (Exh.29/2), in respect of such termination of the award. Thereafter, a notice of change was given under section 42(2) on 2-12-1987 by the registered union to the bank as per exh.3. The conciliator, Mehsana took up the matter for conciliation, but as the conciliation failed, failure report dated 12-1-1988 was submitted by the conciliator as per exh.2 of the record of the Industrial Court. Thereafter, the respondent - union referred the dispute to the Industrial Court under section 73A of the said Act on 1-2-1998. The union also gave justification statement, exh.6, dated

27-10-1989. The petitioner bank replied to that justification statement vide reply exh.11, dated 4-10-1989.

3.1 The registered union made an application on 29-8-1989, exh.9, for an interim award, which ultimately was withdrawn with an understanding between the parties that the reference will be expeditiously heard.

3.2 The petitioner made an application, exh.19, on 21-8-1990 before the Industrial Court in the said reference (I.C.) No. 9 of 1988, raising preliminary objections against the maintainability of the reference. According to the petitioner, the reference was not maintainable, because, the earlier award made on 10th August 1983 was not terminated under section 116(1) of the said Act and also for the reason that the respondent - union was not a representative union for the entire Mehsana district, and that a copy of the notice under section 42(2) issued in Form "L" showed that it was acting as the union for the local area of Mehsana Taluka. That application exh.19 came to be rejected by the Industrial Court, by its speaking order dated 19-6-1992. That order is the subject matter of challenge in Special Civil Application NO. 7372 of 1993.

3.3 A review application was filed in respect of the said order dated 19-6-1992, and that review application came to be rejected by the order dated 22-2-1993 of the Industrial Court. That order is the subject matter of challenge in Special Civil Application No. 5373 of 1993.

3.4 Since the matter was getting prolonged, the respondent - union made an application exh. 40 (at Annexure "G" in Special Civil Application NO. 5374 of 1993), on 24-7-1992, praying the Court for interim relief under section 119(d) of the said Act. That application was contested and ultimately, the Court made a reasoned order thereon on 29-9-1992 ordering by way of interim relief that, from 1-10-1992, the subordinate staff should be given increase of Rs.80=00 per month, the clerical staff at Rs.100=00 per month and the staff of the level of agent above it at Rs.120=00 per month, and that such adhoc increase would be adjusted against the final award. The said order is challenged in Special Civil Application No. 5374 of 1993. The review application which was made in respect of the said order of interim relief was rejected by the Industrial Court on 22-2-1993.

4. The first ground of attack against the impugned award raised by the petitioner was that the challenge as

per the notice issued under section 42(2) of the Act was sought without terminating the earlier award made on 10th August 1983 in reference No. 243 of 1981 by the Industrial Court and therefore, the impugned award was a nullity. Since the reference itself was not maintainable even the interim award was illegal and void.

4.1 It would appear from the record that this contention is based on a wrong assumption that the earlier award was not terminated. The reference for increase in wages was made by the respondent - union to the Industrial Court in the year 1981. The reference No. 243 of 1981 was for the local area of Mehsana Taluka in which the Head Office of the petitioner bank is admittedly situated. The identical cognate references Nos. 244 to 300 of 1981, which were for the same subject matter in connection with the branch offices of the petitioner bank situated in various Talukas of Mehsana district, were merged with the main reference No. 243 of 1981 by a note filed on 1-8-1982, a copy of which is at Annexure "D" in Special Civil Application No. 5372 of 1993, wherein it was declared that the parties had agreed that interim award made at exh.13 in reference (I.C.) No. 243 of 1981 would be treated as binding even in these cases. As recorded in paragraph 9 of the order dated 19th June 1992 of the Industrial Court, the references Nos. 244 to 300 of 1981 were withdrawn and the award dated 10th August 1983 in reference No. 243 of 1981 was made in respect of the employees of all the branches of the petitioner bank. The said award made in reference No. 243 of 1981 which was made in respect of all the employees of the bank was admittedly terminated by a notice under section 116(1) before issuing the change notice under section 42(2) of the Act. Therefore, it cannot be said that the present award is made without the earlier award being terminated. The notice under section 116(1) of the Act for terminating the earlier award dated 10th August 1983 was issued in Form "Q" on 5th August 1987 (Exh.29/1), and the Assistant Registrar had given a certificate in respect of such termination, as per exh. 29/2. These facts were stated in the written arguments of the respondent - union made in reference (I.C.) No. 9 of 1988, a copy of which is at Annexure "I" of Special Civil Application No. 7881 of 1997 and they have not been controverted before the Industrial Court in the written arguments which were given in reply thereto. The learned counsel appearing for the employer before the Industrial Court had accepted the position that the award made on 10th August 1983 in Reference No. 283 of 1981 was terminated under section 116(1) as recorded in paragraph 9 of the order dated 19th June 1992 made on the

application exh.19 as well as in paragraph 4 of the order dated 22-2-1993, rejecting the review application, a copy of which is at Annexure "10" of the Special Civil Application No. 5372 of 1993. Since the award made in Reference No. 243 of 1981 on 10th August 1983, in respect of all the employees including those for whom reference Nos. 244 to 300 of 1981 were made which were merged with the main reference No. 243 of 1981, was terminated by the notice issued under section 116(1) of the Act, it had the effect of terminating the award in respect of all the employees of the bank and there is no substance in the contention that the award was not terminated qua the employees of the Taluka Branches of the bank. It may be noted that even the bank had given notice dated 7-9-1983 (exh. 29/3) to terminate the said award, as mentioned in the written arguments of the respondent - union filed before the Industrial Court in Reference No. 9 of 1988 which fact was not disputed.

5. The next contention raised on behalf of the petitioner is that the respondent - union was recognized for various Talukas of the Mehsana district and that it was not recognized as a union for the whole district. This contention was raised in the application exh.19 dated 21-8-1990 filed by the petitioner before the Industrial Court in the said reference No. 9 of 1988, a copy of which is at Annexure "E" of Special Civil Application No. 5372 of 1993, by way of a preliminary objection against the maintainability of the reference. In this context, it was argued by the learned counsel for the petitioner that since in the notice dated 2-12-1987 given under section 42(2) in Form "L", a copy of which is at Annexure "B" collectively at page 26 of Special Civil Application No. 5372 of 1993, at the bottom, an endorsement showed that it's copy was also sent to the conciliator of the local area of the industry, Mehsana, it should be presumed that the notice was given by the respondent - union only in respect of employees of the Mehsana Taluka Branch of the bank. This contention is wholly misconceived, because, the Head Office of the bank was admittedly in Mehsana and the conciliator of the local area was the concerned conciliator to whom a copy of notice could have been sent under section 42(2) which requires a copy of the notice "to be forwarded to the Chief Conciliator, the Conciliator for the industry for the local area, the Registrar, the Labour Officer ....". A copy of the notice was also forwarded to the other authorities, as required by section 42(2) which fact is not disputed. It will be noticed that the preliminary objection raised by the petitioner in the application exh.19 dated 21st August 1990 was that the

respondent union was not recognized for the whole district, and not that the conciliator to whom a copy of notice of change under section 42(2) was sent, was not the conciliator for the industry concerned for the local area, as contemplated by that provision. There is no dispute over the fact that the Act applied to the business of banking of co-operative banks in the State by virtue of notifications issued under section 2(4) of the Act, which lays down that the State Government may by notification in official gazette apply all or any of the provisions of the Act to all or any other industries, (i.e. industries other than to which it applied by virtue of section 2(3) of the Act by which it was applicable to the industries to which the repealed Bombay Industrial Disputes Act, 1938 applied) whether generally or any local area, as may be specified in the notification. Thus, the local area under section 2(4) for the purpose of applicability of the Act can be the entire State or the local area specified in the notification under section 2(4) of the Act. The State Government is also empowered under section 6(2) to issue notification in the official gazette appointing any person to be a conciliator for any industry, as defined by sub-section (19) of section 3, in a local area specified in such notification. It was never the case of the petitioner before the conciliator, nor in its reply exh.11 filed against the statement of case in Reference No. 9 of 1988 that the conciliator to whom a copy of notice under section 42(2) was sent was not the conciliator appointed for the banking industry for the local area. Since the Head Office of the petitioner was at Mehsana and copy of the notice under section 42(2) was sent to the concerned conciliator - Mehsana, it could never have been validly urged by the petitioner that reference was invalid due to non-compliance of the provisions of section 42(2) of the Act. It would be trite thing to say that the decisions regarding wages concerning all the employees of the bank including those working in its branches would ordinarily be taken at the Head Office from where the management officially operates in such administrative matters. Therefore, the contention that the award is a nullity since copies of the notice under section 42(2) was sent to the conciliator of the Mehsana branch of the bank, is misconceived. In fact, the petitioner did not even urge before the Industrial Court that there was a separate conciliator for the other Talukas and that the conciliator whose office was at Mehsana did not have jurisdiction over the local area of the Talukas of the Mehsana District.

5.1 Even the contention that the respondent - union was not a recognized union for the entire district, is misconceived. There is no multitier recognition system provided for the recognition of unions at Taluka, District and State Levels, as is the underlying assumption of this contention, under Chapters III or IV of the Act. Application for registration as a representative union for an industry in any local area is to be made under section 13(1) by the union and the union having the largest membership of employees employed in the industry is to be registered as contemplated by section 14, proviso "thirdly". The respondent - union was registered as a representative union for the banking industry in the local areas of nine Talukas of Mehsana district under notification No. KH/SHMC/439 - RU dated 5-9-1972 and for Sidhdhapur and Visnagar Talukas, under the notifications dated 31st January 1973 which are at Annexure "A' collectively in Special Civil Application No. 7881 of 1997. It is not disputed that the respondent union was a registered representative union for all the Talukas of Mehsana district in which the petitioner had its banking branches. The respondent union was also an approved union for the banking industry under section 23(1) of the Act read with Rule 26 of the Rules of 1961 by notification No. KH/SHMC/439 - RU dated 5th September 1972 in respect of the local areas of all the said eleven Talukas of Mehsana district, as enumerated in the said notification, a copy of which is at Annexure "A' collectively. It will also be noticed that, in the Annexure to the change notice dated 1-2-1987 issued under section 42(2), it was specifically mentioned in the last paragraph that the respondent union was a registered representative union and approved union for the banking industry of the entire local area of the Mehsana district. There is, therefore, no substance in the contention that the respondent - union could not have issued notice of change for the employees of the petitioner working in its branches of the local areas other than Mehsana Taluka. We, therefore, find ourselves in complete agreement with the reasoning adopted and conclusions reached by the Industrial court in negativing the preliminary objections raised by the petitioner in its application exh.19 against the maintainability of the reference.

6. The learned counsel for the petitioner then contended on the basis of some observations made in the award that the Industrial Court had resorted to conjectures and surmises for granting the increase in wages and other benefits. He assailed the observations made in paragraph 54 of the award wherein the Industrial

Court observed that Sabarkantha district was more backward than Mehsana district, and Banaskantha district was more backward than Sabarkantha district, illustrating inter-se backwardness in percentage. In our opinion, it would be very unfair to pick up some observations from the award to assail the entire award. These were only general observations on the comparative backwardness of the districts in the region which were matters of common knowledge. On going through the award, we are fully satisfied that the cardinal principles underlying award of wages were duly kept in mind by the Industrial Court while making the award. Moreover, there was positive evidence to show the wage structure in similar organizations in the region. A detailed description of such material appeared even in the interim award. The respondent union had produced a comparative chart, exh.44, of the wages paid in various co-operative banks in the Mehsana district and there was no objection raised against the correctness of the contents of such chart. We have gone through that chart and it would appear from the material placed before the Industrial Court that the subordinate staff of Mehsana Nagrik Co-operative Bank was getting wages higher by Rs.150 to Rs.200 per month. The employees of Patan Nagrik Co-operative Bank were also getting about Rs.200 per month higher than the employees of the petitioner. Similarly, the employees of Harij Nagrik Co-operative Bank were also getting higher wages by approximately Rs.200 per month. The employees of the Ahmedabad District Co-operative Bank were getting about Rs.300 per month higher than the employees of the petitioner bank. The employees of the Surendranagar District Central Co-operative Bank were getting wages higher by Rs.150 per month. It would be seen that even the clerical staff of Mehsana Nagrik Co-operative Bank was getting Rs.300 to Rs.400 per month higher than the petitioner's corresponding staff. The clerical staff of the Ahmedabad District Co-operative Bank was getting Rs.700 to Rs.800 higher than the petitioner's staff. The Industrial Court rightly considered the consent awards made on the basis of which the comparable staff of other industries was getting higher amount. It was submitted that a consent award could not be a precedent for deciding the wage structure. A consent award would ordinarily be viewed as a just settlement arrived at between the parties which is found satisfactory by both the sides, and therefore, it would give a clear indication as to the terms on which the industrial harmony was attained by settlement which brought about such consent awards.

6.1 In fact, the Industrial Court has not only relied

upon the consent awards evidencing the wages paid to the comparable workers, but it has also in great detail referred to the profits which were earned by the petitioner from time to time, which was also a relevant factor in fixing the fair wages. Since it was a demand for fair wages, the Industrial Court rightly examined the financial potential of the bank and it came to a finding that the petitioner bank had earned a net profit of Rs.1 crore in 1990, Rs.1.50 crores in 1991, Rs.1.75 crores in 1992, Rs.2.50 crores in 1993 and Rs.2.60 crores in 1994. These were the net-profits that the petitioner earned after setting apart the reserved fund and paying the dividend. A dividend of 15% was paid in the year 1994-95. It is also found that, as per the Annual Report exh.161 for the year 1995-96, the petitioner made a net-profit of Rs.3 crores. On the basis of this relevant material, which has been considered in great detail by the Industrial Court, it came to a finding that the bank's financial position was rosy and it was making progress from time to time showing increase in profits. Thus, a very important factor, namely, the financial condition of the employer was taken into account in great detail by the Industrial Court before fixing the wage structure, besides applying industries-cum-region principle and also taking into account the wages which were awarded about eleven years back to these employees under the award dated 10th August 1983 made in Reference No. 243 of 1981. On the basis of the material on record, it was noted that the wages which were demanded were hardly 6.95 % of the profits of the bank. The Industrial Court also took into account the particulars given in exh.69 in respect of similar banks as well as the revision of scales in Mehsana Dairy as per exh.70. It took into account the statement exh.101 showing increase in the wages and the ratio between the wages and the profits, a comparative statement of which was at exh.68, as discussed in paragraph 60 of the award. After considering the material adduced by both the sides, the Industrial Court partly accepted the demands of the union.

6.2 The moderate rise given

various categories of employees over the existing wages and as against the wages sought in the reference is shown hereunder :

Srl.No.	Post	Old Scales	Scales demanded	Scales awarded (As shown in the statement

exh.44 at Annexure "J"
collectively in Special Civil
Application No.5374 of 1993)

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(1) Manager Rs.950 - 2250 Rs.1275-2910 Rs.1100-2675
(2) Assistant Manager Rs.550 - 1700 Rs. 715-2215 Rs. 700-1975
(3) Accountant (H.O.) Rs.400 - 1200 Rs. 520-1645 Rs. 500-1550
Addl. Accountant,
Sr. Inspector,
Branch Inspector
(4) Agent, Asstt. Sr. Rs. 325 - 900 Rs. 425-1400 Rs. 410-1335

Statistician, Asstt.
Accountant
(5) Sub-Agent, Rs. 275 - 900 Rs. 360-1245 Rs. 350-1275
Divisional Inspector,
Sub-Account & Head
Cashier (H.O.)
(6) Branch Accountant Rs. 225 - 725 Rs. 300-1025 Rs. 285-960

(7) Inspector / Rs. 200 - 700 Rs. 260-910 Rs. 250-875
Supervisor
(8) Clerk, Cashier, Rs. 230 - 600 Rs. 245-850 Rs. 240-865
Typist
(9) Non-Matric Clerk Rs. 150 - 500 (This grade is cancelled and
Mr.Gunvantlal Shah, an employee
in this grade is given the
clerk's grade)
(10) Driver Rs. 225 - 500 Rs. 240-640 Rs. 230-650
(11) Jamadar (peon) Rs. 135 - 375 Rs. 175-560 Rs. 170-500
(12) Sipai & Watchman Rs. 125-375 Rs. 165-500 Rs. 160-485

(13) Jr. Peon - - Rs. 100

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6.3 It will at once be noticed from the comparison of the pay-structure of the employees of the petitioner as it existed when the award was made on 10-8-1983 in Reference No. 243 of 1981 and made effective from 1-8-1988 and the pay-scales which were prescribed under the impugned award that the increase granted with effect from 1-1-1988 cannot, in the facts and circumstances of the case, be said to be excessive in any manner. Even the other demands which have been partly accepted under the impugned award have been accepted on the basis of the relevant material on record and for valid reasons.

7. We are satisfied from the contents of the impugned award that it is based on the relevant material placed before the Industrial Court and that the award has

been made keeping in view the basic principles of wage fixation. The Industrial Court has taken into consideration the comparable units, paying capacity of the bank and was alive to the factors enumerated by the Apex Court which were required to be kept in mind while fixing the wages. This is evident from the discussion contained in paragraphs 45 and 46 of the award.

7.1 The learned Senior Counsel for the respondent union referred to the decision of the Supreme Court in Calcutta Port Shramik Union v. The Calcutta River Transport Association, reported in AIR 1988 SC 2168, in which it was held, in paragraph 10 of the judgement, that the object of enacting Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace and whenever a reference is made by a Government to an Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising powers of judicial review to sustain, as far as possible, the awards made by Industrial Tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the Tribunals by striking down awards on hyper-technical grounds.

7.2 The decision of the Supreme Court in Food Corporation of India Workers' Union v. Food Corporation of India, reported in (1996)9 SCC 439 was referred to for the observation contained in paragraph 16 of the judgement that, there should be only "material before a Tribunal and not evidence as required by the Evidence Act before a Court" The approach of the Tribunal should be to ascertain whether on weighing the probabilities, the material placed by the petitioner was acceptable or rendered probable.

7.3 Reference was also made to the decision of this Court in Saurashtra Paper & Board Mills Pvt. Ltd. v. State of Gujarat, reported in XXXIII (2) GLR 871, in which it was observed that the remedy under Article 226 of the Constitution was discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder, can refuse to upset it with a view to doing substantial justice between the parties.

7.4 The decision of the Supreme Court in The Kamani Metals & Alloys Ltd. v. The Workmen, reported in AIR 1967

SC 1175 was cited by the learned counsel for the respondent for pointing out the principles involved in fixation of wage structure. These principles were applied by the Industrial Court while making the award as is evident from the impugned award.

8. The Industrial Court has dealt each and every demand of the respondent - union on a valid basis and reached a just and proper conclusion for giving a moderate rise in the wages and other marginal benefits under the impugned award by partially accepting the demands. The Industrial Court has, in its final order, indicated different dates from which the award under various heads was to be implemented. Considering the facts and circumstances of the case, the increase in wages and dearness allowance, were accordingly directed to be given from 1-1-1988; increase in daily allowance, vehicle allowance, uniform allowance from 1-8-1997; medical allowance at Rs.50 per month from 1-1-1988, Rs.60 per month from 1-1-1991 and Rs.70 per month from 1-1-1994; special duty allowance, table advance allowance, transfer allowance were to be given from 1-1-1992, and, education allowance from 1-6-1997. The demand for eligibility for consideration of applications for compassionate appointments was accepted from 1-1-1992.

9. It is therefore clear that the Industrial Court has reached its conclusions after proper application of mind and on the basis of material on record and has not committed any error in exercise of its jurisdiction in making the impugned award. There is absolutely no warrant for interference by this Court in the impugned award. All these petitions are, therefore, rejected. Rule is discharged in each of them with no order as to costs.

10. It is stated by the learned counsel for both the sides that the award has already been implemented as per the interim directions given by this Court with effect from 1st September 1997. The learned counsel for the petitioner states that the profits of the bank have now been going down. According to him, in the year 2001, the profit was Rs.2.25 crores and it has scaled down to Rs.75 lakhs in the year ending on March 2002. He says that the bank is anticipating loss in future and therefore, it will not be able to bear the burden of arrears, which would be around Rs.8 crores. He therefore prays for waiving the amount of arrears. The contention that payment of arrears as per the award would be burdensome on the employer in view of the fact that its profits are likely to go down can hardly be countenanced. The impugned award for various demands has been made from the dates from which, according to the

Industrial Court, the employees were entitled to the rise and the amounts which ought to have been given to the employees were not given to them at the relevant time, which has brought about the industrial dispute. Any apprehension of future loss is irrelevant at this stage since the award was made in context of the rising profits earned by the employer and other relevant factors. The Industrial Court has not fixed the dates for the rise in wages and other benefits in any arbitrary manner. There is therefore no ground for directing the arrears to be waived as prayed for on behalf of the petitioner.

10.1 It is prayed that the interim relief against the payment of arrears may continue for six weeks. We do not find any warrant for accepting such request.

AUGUST 29, 2002 [R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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